LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

10th Meeting, 2014 (Session 4)

Wednesday 2 April 2014

The Committee will meet at 10.00 am in Committee Room 3.

1. **Disabled Persons’ Parking Badges (Scotland) Bill:** The Committee will take evidence on the Disabled Persons’ Parking Badges (Scotland) Bill from—

   Keith Brown, Minister for Transport and Veterans, Scottish Government;

   Jill Mulholland, Transport, Accessibility and Road Safety, Transport Scotland;

   James Simpson, Policy Officer, Road Policy, Transport Scotland;

   Stuart Foubister, Divisional Solicitor, Legal Directorate, Scottish Government;

   and then from—

   Dennis Robertson, Member in Charge of the Bill, Scottish Parliament;

   Sharon Grant, Bill Manager, Transport Scotland;

   Stuart Foubister, Divisional Solicitor, Legal Directorate, Scottish Government.

2. **Subordinate Legislation:** The Committee will consider the following negative instruments—

   Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50);

   Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2014 (SSI 2014/51).
3. **Disabled Persons’ Parking Badges (Scotland) Bill (in private):** The Committee will consider the evidence received.

4. **Inquiry into the Flexibility and Autonomy of Local Government (in private):** The Committee will review its approach to the inquiry.

5. **Draft Community Empowerment (Scotland) Bill (in private):** The Committee will consider what action it wishes to take in response to the evidence received on the Draft Community Empowerment (Scotland) Bill.

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Clerk to the Local Government and Regeneration Committee  
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Edinburgh  
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The papers for this meeting are as follows—

**Agenda Item 1**

**PRIVATE PAPER**

Minister for Transport and Veterans submission  
LGR/S4/14/10/1 (P)

**Disabled Persons' Parking Badges (Scotland) Bill**

Written submissions received in response to the Local Government and Regeneration Committee Call for Evidence

**Agenda Item 2**

Subordinate Legislation Cover Note  
LGR/S4/14/10/3

**Agenda Item 4**

**PRIVATE PAPER**  
LGR/S4/14/10/4 (P)

**Agenda Item 5**

PRIVATE PAPER  
LGR/S4/14/10/5 (P)
20 March 2014

Disabled Persons’ Parking Badges (Scotland) Bill

Thank you for your letter of 4 March. I am happy to accept your invitation to give evidence to the Committee on the Disabled Persons’ Parking Badges (Scotland) Bill at its meeting on 2 April 2014.

I fully support the Bill to strengthen administration and enforcement of the blue badge scheme which follows a programme of reform of the scheme. Scottish Government officials have been working with Dennis Robertson MSP, local authorities and other interested agencies to develop the Bill.

As requested, my responses to the specific questions you have asked are contained in Annex A.

I hope this is helpful.

Kind regards

KEITH BROWN
1. In what way do you consider the Bill will strengthen the existing blue badge scheme? Will it weaken it in any way?

The blue badge scheme has been running since 1971. The aim of the recent Scottish Government reform of the scheme has been to ensure that the scheme remains fit for purpose, providing a concession which enables disabled people to access the community more easily and to help them lead independent lives. Recent improvements to the scheme have included a new badge design and the introduction of the blue badge improvement service (BBiS) database which provides up to date information on badges issued in Scotland, England and Wales. Both initiatives contribute to reducing the propensity for fraud and forgery.

However, more still needs to be done to reduce misuse. Research commissioned by Transport Scotland in 2012 on the Use and Value of the blue badge concluded that badge holders value the parking concessions provided by their blue badge. However many reported that they had also experienced misuse of the scheme.

The Bill responds to the views of badge holders by enhancing the existing powers to enforce the scheme; sending out the message that blue badge misuse is socially unacceptable. The relevant provisions are strong preventative measures. These strengthening powers do not seek to catch many more abusers but rather to discourage and prevent abuse of the system in the first place, thereby saving time and money for enforcement agencies and crucially freeing up spaces to be used by blue badge holders.

I am also pleased that the Bill will further strengthen the scheme by providing a process which will allow persons who have been refused a blue badge on grounds of eligibility to request a review of the decision, providing a more consistent and fair approach across the country.

There is no evidence to suggest that the Bill will weaken the scheme.

2. What are your views on providing powers under the Bill to confiscate badges to persons other than parking attendants in uniform?

The Bill will allow local authorities to choose to appoint enforcement officers, in addition to parking attendants in uniform, to inspect and confiscate badges that are being misused. Currently inspection of badges must be carried out by enforcement staff in uniform which in effect denies local authorities the flexibility of using non uniformed officers for covert operations in cases of widespread abuse.

Local authorities often receive complaints about suspected blue badge misuse from members of the public who rightly expect that their concerns will be treated seriously and the circumstances thoroughly investigated. This might involve targeted surveillance exercises, sometimes in association with the police.

Other cases may be reported by parking attendants who cannot routinely establish a pattern of misuse and therefore further investigation is needed. In these cases it is unlikely that parking attendants can undertake this work as part of routine duties without drawing attention to themselves.
It would not be the intention to use non uniformed officers to approach blue badge holders indiscriminately. I expect that if widespread, organised or persistent misuse is not an issue in a particular area then there will not be a need for such an officer. However, if a local authority determines that there is a need to appoint such an officer then the option is there.

It will be important that non uniformed officers carry identification and are trained in the role. Dennis Robertson MSP is working with Transport Scotland and a multi-agency working group to develop guidance which local authorities can use in training. The same provision was introduced in England and Wales recently and we will seek information on early experience to inform guidance.

3. Are there any other equality issues arising from the proposed Bill?

I do not envisage any other equality issues arising from the Bill. Dennis Robertson MSP worked with Transport Scotland and consulted the Mobility and Access Committee for Scotland (MACS) to identify equality issues. The Equality Impact Assessment results document identified that the impacts from enhanced enforcement will be widely positive for disabled people with no negative implications identified for other equality groups.

4. Do you have any other relevant comments or suggestions; in particular are there other proposals which should have been included in the Bill?

The Bill complements and concludes the reform of the scheme which began in 2010. This is not to say that there would be no further changes in the blue badge scheme in the future, but I would like to see the scheme bed in and monitor these changes, as well as the impact of welfare reform, on the scheme before deciding on further change.

The development of the Bill has identified the need to raise public awareness of the blue badge scheme. Dennis Robertson MSP has raised the profile of the scheme and is working with the multi-agency working group and Transport Scotland to identify what action can be taken to highlight the rules of the scheme and the changes which the Bill will introduce.
Local Government and Regeneration Committee

10th Meeting, 2014 (Session 4), Wednesday 2 April 2014

SSI Cover Note

Introduction

1. This paper seeks to inform Members’ consideration of two SSIs—

   • Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50);

   • Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2014 (SSI 2014/51).

Procedure in committee

2. Under negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul it is agreed to by the Parliament (within the 40-day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50)

Background

3. This instrument was laid on 27 February 2014, and the Local Government and Regeneration Committee was designated as lead committee.

4. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 18 March 2014 and have drawn issues with the instrument to the attention of the Committee. The comments of the Delegated Powers and Law Reform Committee are attached at Annex A to this paper. The Local Government and Regeneration Committee must report by 21 April 2014.

5. The regulations are subject to negative procedure. No motion to annul has been lodged. It will come into force on 1 April 2014.

Purpose of the Instrument

6. These Regulations amend the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (“the 2003 Regulations”), following upon the approval by the Scottish Parliament on 4th December 2013 of a new model code of conduct for members of public bodies. This model code was laid before the Parliament by the Scottish Ministers under section 2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the 2000 Act”) and was issued on 3rd February 2014. The issuing of the new model code will lead to fresh codes being issued in relation to the conduct of members of each devolved public body listed in schedule 3 to the 2000 Act. These codes will be in line with the terms of the new model code.
7. The provisions in the new model code dealing with the registration of members’ interests are different in certain respects from the equivalent provisions in the previous model code. These Regulations therefore amend the 2003 Regulations so that, once a revised code applicable to the members of a devolved public body is in effect, the notices required to be given by those members will reflect the relevant new provisions concerning registration of interests.

8. The instrument is subject to the negative procedure. It comes into force on 1 April 2014.

Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2014 (SSI 2014/51)

Background

9. This instrument was laid on 27 February 2014, and the Local Government and Regeneration Committee was designated as lead committee.

10. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 18 March 2014 and have drawn issues with the instrument to the attention of the Committee. The comments of the Delegated Powers and Law Reform Committee are attached at Annex B to this paper. The Local Government and Regeneration Committee must report by 21 April 2014.

11. This instrument is subject to the negative procedure and is due to come into force on 1 April 2014.

Purpose of the Instrument


13. To this end regulation 2 inserts “heavy fuel oils” to the list of hazardous substances and controlled quantities in Schedule 1 to the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.

14. Regulation 3 confers transitional immunity from prosecution and contravention proceedings for a period of 6 months from the day these Regulations come into force. During that time an application for consent may be made.

15. Any impacts arising to businesses are considered negligible, and there are no direct impacts to the third sector, therefore a Business and Regulatory Impact Assessment is not required.

Action

16. No motions to annul any of these instruments have been lodged.
17. Unless a motion to annul the instrument is lodged, the Committee need only consider the instruments, and indicate whether it is content not to make any recommendations on them.

18. The Committee may wish to minute the points made by the Delegated Powers and Law Reform Committee, and any views held on these points.

19. Is the Committee content not to make any recommendations to the Parliament on these instruments?

Ben Morton
Committee Assistant
21 March 2014

Annex:

A. Comments from the Delegated Powers and Law Reform Committee on the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50).

B. Policy Note Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50).


Annex A: Comments from the Delegated Powers and Law Reform Committee on the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50).

1. The Delegated Powers and Law Reform Committee’s recommendations in relation to the instrument are set out below.

2. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced below.

3. Regulation 4 inserts a new regulation 4A into the 2003 Regulations. The new regulation 4A will apply where a members’ code, including a revised or reissued members’ code, has effect from a date later than 31 March 2014. Regulation 4A(2) provides that a member to whom regulation 4A(1) applies shall give to the standards officer a notice of interests.

4. Under regulation 3 of the 2003 Regulations, every devolved public body has a standards officer except for devolved public bodies which are also National Park Authorities. National Park Authorities have a proper officer, and not a standards officer. The new regulation 4A(2) of the 2003 Regulations, as inserted by these Regulations, ought, therefore, to refer to the proper officer as well as the standards officer in order for it to apply to devolved public bodies which are also National Park Authorities. In the absence of such a reference, the Committee considers it doubtful that the new regulation 4A properly applies to National Park Authorities.

5. The Scottish Government has stated that regulation 4A is intended to apply to National Park Authorities, but that it considers that National Park Authorities would simply read the reference to “standards officer” as a reference to “proper officer” when construing the new regulation 4A. The Scottish Government also stated that it would draw the attention of the National Park Authorities to the omission in the regulation during the process of approving the National Park Authorities’ revised members’ codes.

6. The Committee does not consider that National Park Authorities should be expected to read the reference to the standards officer as a reference to the proper officer. The Committee further does not consider the Scottish Government’s intention to simply draw the matter to the attention of the National Park Authorities during the course of approving their revised codes of conduct to be appropriate. The Committee considers that where subordinate legislation imposes duties on individuals or bodies it ought to be clear from the face of the legislation what those duties are, to whom they apply and how they are to be fulfilled. The Committee considers that it would be possible for a National Park Authority to conclude, from the drafting of the new regulation 4A, that it does not apply to it as there is no reference to the proper officer. To the extent that regulation 4A fails to refer to proper officer, therefore, the Committee considers this instrument to be defectively drafted.

7. The Committee accordingly draws the instrument to the attention of the Parliament under reporting ground (i). The drafting of regulation 4 is defective, as the new regulation 4A(2), which it inserts into the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 fails to refer to the “proper officer” as the person to whom members of devolved public bodies which
are also National Park Authorities must give a notice of interests. The Committee also finds it highly unsatisfactory that the Scottish Government does not propose to correct this error prior to the instrument coming into force.

On 5 March 2014, the Scottish Government was asked:

The instrument inserts a new Regulation 4A into the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003. Regulation 4A(2) provides that each member to whom a code referred to in paragraph (1) applies shall give to the standards officer a notice of interests. Is inserted Regulation 4A intended to apply to devolved public bodies which are also National Park Authorities? If so, is it accepted that Regulation 4A(2) ought to refer to the proper officer in addition to the standards officer so as to be applicable to National Park Authorities which, by virtue of Regulation 3 of the 2003 Regulations, do not have a standards officer?

If the Scottish Government accepts that the new Regulation 4A(2) ought to refer to the proper officer as well as the standards officer, would the Scottish Government propose to take action to correct this?

The Scottish Government responded as follows:

Regulation 4A is intended to apply to devolved public bodies which are also National Park Authorities. The regulation places certain duties on a member to whom a members’ code referred to in paragraph (1) applies. The term “members’ code” is defined in section 28(1) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as meaning a code of conduct for members of a devolved public body. The term “devolved public body” is in turn defined as meaning a body listed in schedule 3 to that Act and both National Park Authorities are listed in that schedule.

It is accepted that a reference to the proper officer should have been included in regulation 4A(2) and the Scottish Government apologises for this omission. There is not, however, thought to be any possibility that a National Park Authority or a member of such a body would apply regulation 4A(2) other than by reading it as imposing a duty to give notices to the proper officer. There is therefore no intention to make an amending instrument. The drafting error can be drawn to the attention of the National Park Authorities during the process of approving their new codes of conduct under section 3 of the 2000 Act.
Annex B: Policy Note Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations (SSI 2014/50).

POLICY NOTE

THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000 (REGISTER OF INTERESTS) AMENDMENT REGULATIONS 2014

SSI 2014/50

1. The above Regulations are made in exercise of the powers conferred by section 7(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000. They are subject to the negative procedure.

Policy Objective

2. Under the Ethical Standards in Public Life etc. (Scotland) Act 2000, the Scottish Ministers were required to lay before the Parliament a Model Code of Conduct for Members of Devolved Public Bodies. The Act established a framework to ensure the highest standards of behaviour were maintained by local authority councillors and members of certain public bodies. Public Bodies listed in schedule 3 of the Act are required to produce a code of conduct in line with the Model Code.

3. The original Model Code was approved by the Parliament in December 2001. A new Model Code was approved by the Parliament on 4th December 2013 and was published on the Scottish Government website on 3rd February 2014.

4. The provisions in the new Model Code dealing with the registration of members’ interests are different in certain respects from the equivalent provisions in the previous Model Code. These Regulations therefore amend The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 to ensure members are clear about the notifications that will now need to be given in respect of registrable interests.

Consultation

5. A public consultation was held in February 2013 to obtain views on the proposed Members Model Code of Conduct. The consultation ran for 12 weeks between 1st February and 26th April. The consultation document and analysis report can be viewed on the Scottish Government’s website, along with those responses where respondents gave permission for these to be published.

6. One of the recommendations arising from the consultation was for the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 to be amended in line with the changes being introduced in the new Model Code.

7. Policy officials engaged with key stakeholders to obtain their views on the proposed amending Regulations. Responses welcomed and supported the amended Regulations.
Impact Assessments

8. As the policy has no direct impact on equalities, business or the third sector, or on the environment or environmental issues, neither an Equalities Impact Assessment (EQIA), Business and Regulatory Impact Assessment (BRIA) or a Strategic Environmental Assessment (SEA) is required.

Local Government and Communities
Scottish Government
February 2014
Annex C: Comments from the Delegated Powers and Law Reform Committee on the Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2014 (SSI 2014/51)

1. The Delegated Powers and Law Reform Committee’s recommendations in relation to the instrument are set out below.

2. The Regulations implement Article 30 of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances. Regulation 2 inserts “heavy fuel oils” to the list of hazardous substances and controlled quantities in Schedule 1 to the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (“the 1993 Regulations”).

3. Regulation 3 contains provisions which confer transitional immunity from prosecution and contravention proceedings if certain requirements are met, for 6 months from 29 March 2014 when the Regulations come into force. During that time, an application for hazardous substances consent for uses involving heavy fuel oils may be made.

4. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced below.

5. The Government’s response to the Committee acknowledges that there has been a relatively short delay in implementing (transposing) Article 30 of Directive 2012/18/EU within the 1993 Regulations. These Regulations come into force on 29 March 2014. Article 31 of the Directive provides that Article 30 required to be transposed into domestic law by 14 February 2014. The Committee draws the explanation for that delay, and the effect of the transitional provision in regulation 3, to the attention of the lead committee.

6. The Committee therefore draws the following matters to the attention of the lead committee considering the Regulations:

7. Firstly, these Regulations come into force on 29 March 2014. Article 31 of the Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances provides that Article 30 (which these Regulations implement) required to be transposed into domestic law by 14 February 2014. Directive 2012/18/EU was published in July 2012.

8. The explanation provided by the Scottish Government for the relatively short delay in transposing the EU requirements is that there have been competing resource pressures within the policy department at the time when the instrument was due to be laid. There has also been a need to liaise with the Health and Safety Executive and with the UK administrations on the outcome of consultations on the proposals, which has precluded a substantially earlier transposition date.

9. Secondly, regulation 3 has effect in the situation where, as a result of the change in the treatment of heavy fuel oil (HFO) effected by the Regulations (from an HFO limit of 100 tonnes to HFOs being calculated within the total limit of 2500 tonnes of petroleum products), a person who does not presently need a hazardous
substances consent would require consent immediately as from 29 March 2014. Regulation 3 provides for a transitional exemption from enforcement procedures for a 6 month period if the conditions for exemption are met, to enable the persons affected to make an application for consent.

10. It appears to the Committee that the need for the exemption period to operate from 29 March until 28 September 2014 might have been avoided, had the instrument been made sufficiently in advance of 14 February, so that affected persons could have obtained consent in time for Article 30 of Directive 2012/18/EU being transposed into Scots law. The need for this exemption period, which provides transitional immunity from prosecution and contravention proceedings, results from the Regulations being laid before Parliament on 27 February with a coming into force date of 29 March, rather than having been planned and coordinated to implement the transposition deadline of 14 February.

On 5 March 2014, the Scottish Government was asked:

1. These Regulations come into force on 29 March 2014. Article 31 of the Directive 2012/18/EU provides that Article 30 (which these Regulations implement) required to be transposed into domestic law by 14 February 2014. In the absence of explanation in the documents accompanying the instrument, please explain the reason for this apparent delay in implementing the EU Directive requirements.

2. Article 30 as above has required the addition of heavy fuel oils within the list of petroleum products specified in schedule 1 to the 1993 Regulations, for which the threshold controlled quantity is a total of 2500 tonnes of petroleum product. For heavy fuel oils, this appears to provide for a significantly relaxed threshold quantity requirement before the controls in the 1993 Regulations apply. Paragraph 6 of the Policy Note explains that currently the threshold is only 100 tonnes. The transitional exemption in regulation 3 appears to permit the presence of petroleum products (gasolines and naphthas, kerosenes, gas oils and heavy fuel oils) on, over or under land during the period from 29 March to 28 September 2014 without hazardous substance (“HS”) controls, where the presence would not have required HS consent in terms of the 1993 Regulations as they have effect immediately before this instrument comes into force - and there is no increase from the maximum quantity of product on the site in the year prior to 29 March 2014.

In the absence of a full explanation accompanying the instrument, please explain therefore the effect of regulation 3, and how it will operate to transitionally exempt for 6 months the presence of petroleum products on sites from HS controls. As regulation 2 appears to provide for the significantly relaxed controlled quantity threshold for heavy fuel oils only, in what circumstances would this provision permit the presence of petroleum products on sites, which otherwise would (without the benefit of the provision) mean that an offence could be committed under section 21 of the 1997 Act, or an HS contravention notice issued?

3. Again in the absence of explanation accompanying the instrument, please explain why regulation 3 is compatible with Articles 30 and 31 of Directive 2012/18/EU. As it appears that Article 30 (and in turn the controlled quantity requirement for heavy fuel oils as a
hazardous substance which that Article requires) should have been transposed within the 1993 Regulations by 14 February 2014, but the regulation permits the presence of petroleum products on sites without hazardous substance enforcement controls from 29 March 2014 to 29 September 2014, please explain why regulation 3 does not authorise any incompatibility with EU law.

The Scottish Government responded as follows:

1. With regard to the first question, a small delay in transposition arose due to competing resource pressures within the policy department at the time when the instrument was due to be laid, and because the need to liaise closely with the Health and Safety Executive and with the UK administrations regarding the outcome of GB wide consultations had precluded an substantially earlier transposition date.

2. With regard to the second question, at present a person holding up to 2,500 tonnes of petroleum products (consisting of gasolines and naphthas, kerosenes and gas oils) does not need hazardous substances consent. That person could also hold up to 100 tonnes of heavy fuel oil ("HFO") without consent. Regulation 3 deals with the situation where, as a result of the recategorisation of HFO, a person who does not presently need consent will need consent from 29 March 2014. For example, a person holding 2,450 tonnes of petroleum products and 80 tonnes of HFO does not need a licence on 28 March but will need one on 29 March. Regulation 3 provides for a transitional relaxation of enforcement procedures for a period of 6 months. However, the exemption from enforcement action does not apply if the quantities held increases to more than the maximum held in the previous 12 months. The Scottish Government considers it unlikely that many sites will be affected by this transitional exemption.

3. With regard to the third question, the effect of regulation 3 is not that hazardous substances consent is not needed in accordance with Article 30 of Seveso III but rather that enforcement action is restricted. The exemption does not remove the need for consent but removes the possibility that a person could suddenly on these Regulations coming into force be in the position of committing an offence under section 21 of the Planning (Hazardous Substances) (Scotland) Act 1997 and open to enforcement action despite having complied with the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993. If these factual circumstances do arise, the transitional exemption from enforcement action will enable someone in that position to obtain the necessary consent without allowing them to increase the quantities of the relevant substances above the maximum levels which they were present since 29 March 2013. In those circumstances it is not considered that regulation 3 is incompatible with Community law.

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (HAZARDOUS SUBSTANCES) (SCOTLAND) AMENDMENTS REGULATIONS 2014

SSI 2014/51

Introduction

1. The above instrument was made in exercise of the powers conferred by section 3 of the Planning (Hazardous Substances) (Scotland) Act 1997. The instrument is subject to negative resolution procedure.

Policy Objectives

2. These Regulations amend the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (‘the 1993 Regulations’), to add “Heavy Fuel Oils” to the list of petroleum products in Part A of Schedule 1 to the Regulations. The effect of this change is to specify a significantly higher and more proportionate threshold quantity above which hazardous substances consent must be obtained from the Planning Authority. The changes are required to implement article 30 of European Directive 2012/18/EU (known as the ‘SEVESO III’ Directive) with respect to the Scottish planning system, and follows recognition in Europe that previous qualifying inventory thresholds in respect of Heavy Fuel Oils (‘HFO’) were unreasonable and needed to be rationalised.

Background

3. The SEVESO III Directive is concerned with the control of major-accident hazards involving dangerous substances; it aims to prevent major-accident hazards involving certain dangerous substances and limit their consequences for human beings and the environment. To achieve this, the Directive specifies certain substances as dangerous and sets threshold quantities for their presence that trigger various requirements for on-site safety measures, off-site emergency plans, and land use planning requirements.

4. Existing requirements are implemented in the main by the Control of Major Accident Hazards Regulations 1999 (COMAH Regulations), which apply on a GB wide basis and are enforced by HSE and, in Scotland, SEPA. Corresponding land use planning provisions are devolved, and in Scotland are given effect through the 1993 Regulations.

5. The 1993 Regulations therefore require sites with hazardous substances above certain threshold quantities to obtain a hazardous substances consent from the planning authority. They contain both individually named substances and generic categories of substances with threshold quantities triggering the need for Planning Hazardous Substances consent.
Article 30 of New Directive 2012/18/EU

6. Article 30 of the Seveso III Directive amends European Directive 96/82/EC by adding a new entry to Part 2 of Annex 1 to the Directive under the Petroleum Products heading. The effect of this change is to remove the uncertainty that previously existed as regards the appropriate qualifying quantities for heavy fuel, by specifying a significantly higher and more proportionate threshold quantity of 2,500 tonnes for the total amount of petroleum products, and more accurately reflecting the major-accident potential of HFO. Currently, the absence of a specific entry for HFO means such substances come under the generic category of “dangerous for the environment” with a controlled quantity of only 100 tonnes.

7. In light of the above changes to European legislation, this instrument amends the schedule of named substances and controlled quantities in the 1993 Regulations to add “heavy fuel oils” to the named category of “Petroleum Products”. Provision is also made to confer transitional immunity from prosecution and contravention proceedings for a period of 6 months from the day these Regulations come into force. During that time, an application for consent may be made.

Consultation

8. The Health and Safety Executive (HSE) published a GB wide consultation paper setting out the changes required to COMAH regulations and to planning legislation on hazardous substances consent in the constituent parts of Great Britain. That paper was widely circulated including to industry and to Scottish planning authorities. A separate Scottish consultation was not considered necessary.

Impact Assessments

8. There are no equality impact issues arising, therefore an equalities impact assessment has not been undertaken.

9. As there is no likely significant effect on the environment, or on environmental issues, no Strategic Environmental Assessment (SEA) is required.

10. The changes will not require the use and/or storage of personal data, therefore, no Privacy Impact Assessment (PIA) is required.

Financial Effects

11. The Minister for Local Government and Planning confirms that no Business and Regulatory Impact Assessment is necessary, and any financial effects arising from this instrument are considered to be negligible.